

Paul J. Riehle (SBN 115199)
paul.riehle@faegredrinker.com
**FAEGRE DRINKER BIDDLE & REATH
LLP**
Four Embarcadero Center, 27th Floor
San Francisco, CA 94111
Telephone: (415) 591-7500

Christine A. Varney (*pro hac vice*)
cvarney@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000

Counsel for Plaintiff Epic Games, Inc.

[Additional Counsel Appear on Signature Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE GOOGLE PLAY STORE ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

Match Group, LLC et al. v. Google LLC et al.,
Case No. 3:22-cv-02746-JD

Douglas J. Dixon (SBN 275389)
ddixon@hueston.com
HUESTON HENNIGAN LLP
620 Newport Center Drive, Suite 1300
Newport Beach, CA 92660
Telephone: (949) 229-8640

Counsel for Plaintiffs Match Group, LLC, et al.

Case No. 3:21-md-02981-JD

**DECLARATION OF
MICHAEL J. ZAKEN IN SUPPORT OF
EPIC'S AND MATCH'S MOTION TO
AMEND COMPLAINTS**

Date: Nov. 17, 2022 at 10:00 am
Courtroom: 11, 19th Floor
Judge: Hon. James Donato

1 I, Michael J. Zaken, declare as follows:

2 1. I am Of Counsel at Cravath, Swaine & Moore LLP, counsel to Epic
3 Games, Inc. (“Epic”) in the above-captioned actions. I am admitted to appear before
4 this Court *pro hac vice*.

5 2. I have personal, first-hand knowledge of the facts set forth in this
6 Declaration. If called as a witness, I could and would competently testify to these facts
7 under oath.

8 3. Attached hereto as **Exhibit A** is a true and correct copy of Epic’s Proposed
9 Second Amended Complaint (“SAC”).

10 4. Attached hereto as **Exhibit B** is a true and correct copy of a blackline of
11 Epic Games, Inc.’s (“Epic”) SAC to Epic’s First Amended Complaint (“FAC”) filed
12 July 21, 2021 (Dkt. No. 64).¹

13 5. Attached hereto as **Exhibit C** is a true and correct copy of the document
14 produced by Google in this litigation bearing Bates range
15 GOOG-PLAY-007280918-920 (marked as Plaintiffs’ Deposition Exhibit 150), which
16 includes an email from Google’s employee Ms. Karen Beatty at the pages ending in
17 ’918-919, dated December 11, 2019.

18 6. Attached hereto as **Exhibit D** is a true and correct copy of the document
19 produced by Google in this litigation bearing Bates range
20 GOOG-PLAY-007424789-790 (marked as Plaintiffs’ Deposition Exhibit 1478 and
21 1523), which is an e-document titled “Riot GVP Deal”, dated November 17, 2020 from
22 document metadata.

23 7. Attached hereto as **Exhibit E** is a true and correct copy of the document
24 produced by Google in this litigation bearing Bates range
25 GOOG-PLAY-000929031-041 (marked as Plaintiffs’ Deposition Exhibit 162), which is

26
27
28 ¹ All citations are to the MDL docket unless otherwise indicated.

1 a document titled “Games Velocity Program Addendum to the Google Play Developer
2 Distribution Agreement”, dated March 9, 2020.

3 8. Attached hereto as **Exhibit F** is a true and correct copy of the document
4 produced by Google in this litigation bearing Bates range
5 GOOG-PLAY-007847561-565, which is a document titled “Terms for Strategic
6 Partnership Between Google LLC and Activision Blizzard King”, dated
7 January 24, 2020.

8 9. Attached hereto as **Exhibit G** is a true and correct copy of the document
9 produced by Google in this litigation bearing Bates range
10 GOOG-PLAY-007273439-444 (marked as Plaintiffs’ Deposition Exhibit 153), which is
11 a document titled “Games Velocity Program Addendum to the Google Play Developer
12 Distribution Agreement”, dated January 25, 2020.

13 10. Attached hereto as **Exhibit H** is an excerpt of a true and correct copy of the
14 deposition transcript of Google’s former employee, Mr. Lawrence Koh, previously
15 Global Head of Games Business Development at Google Play.

16 11. Attached hereto as **Exhibit I** is an excerpt of a true and correct copy of the
17 deposition transcript of Google’s employee, Ms. Purnima Kochikar, Vice President of
18 Google Play Partnerships.

19 12. Attached hereto as **Exhibit J** is an excerpt of a true and correct copy of the
20 deposition transcript of Activision’s employee, Mr. Armin Zerza, CFO of Activision.

21 13. I am informed and believe that since December 3, 2021, Defendants
22 Google LLC, Google Ireland Limited, Google Commerce Limited and Google Asia
23 Pacific Pte. Limited (collectively, “Google”) and multiple third parties produced
24 approximately 1,329,000 documents.

25 14. I am informed and believe that since December 3, 2021, Google has
26 produced approximately 757,000 documents, about a quarter of its total production.

1 15. I am informed and believe that since December 3, 2021, third parties have
2 produced approximately 572,000 documents.

3 16. I am informed and believe that since December 3, 2021, Plaintiffs² have
4 taken 31 depositions of Google witnesses and 10 depositions of third-party witnesses. I
5 am informed and believe that Plaintiffs have noticed three additional depositions of
6 Google witnesses that have yet to be taken.

7 17. I am informed and believe that since December 3, 2021, Plaintiffs have
8 questioned Google witnesses about Google's Project Hug deals, including in the
9 depositions of Paul Bankhead, Paul Feng, Paul Gennai, Donald Harrison, Hiroshi
10 Lockheimer, Lawrence Koh, James Kolotouros, Michael Marchak, Ruth Porat and
11 Jamie Rosenberg.

12 18. I am informed and believe that important discovery regarding Google's
13 Project Hug deals was completed in late August and late September 2022, with the
14 depositions of Ms. Purnima Kochikar and Mr. Armin Zerza.

15 19. On September 30, 2022, counsel for Epic informed counsel for Google that
16 Epic was considering amending its First Amended Complaint. On October 2, 2022,
17 counsel for Epic emailed Google's counsel a copy of Epic's draft Second Amended
18 Complaint and requested that Google inform Epic whether it would consent to the
19 amendment. Google informed Epic on October 7, 2022 that it did not consent. The
20 same day, Epic informed Google that Match intended to join in this motion and file a
21 similar amendment.

22 20. Attached hereto as **Exhibit K** is a true and correct copy of Plaintiffs Match
23 Group LLC et al.'s ("Match") Proposed First Amended Complaint.

27 2 "Plaintiffs" refers to Epic, Consumer Plaintiffs, State Attorneys General Plaintiffs
28 and Plaintiffs Match Group LLC et al.

1 21. Attached hereto as **Exhibit L** is a true and correct copy of a blackline of
2 Plaintiffs Match's First Amended Complaint to Match's Complaint ("FAC") filed May
3 9, 2022 (Match Dkt. 1).

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF MICHAEL J. ZAKEN IN SUPPORT OF EPIC'S AND MATCH'S
MOTION TO AMEND COMPLAINTS

Case No. 3:21-md-02981-JD

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
2 foregoing is true and correct and that I executed this declaration on October 7, 2022 in
3 New York, NY.

4 */s/ Michael J. Zaken* _____
5 Michael J. Zaken
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF MICHAEL J. ZAKEN IN SUPPORT OF EPIC'S AND MATCH'S
MOTION TO AMEND COMPLAINTS

Case No. 3:21-md-02981-JD